

REMARKS:

The Office Action dated April 23, 2007 rejects each and every pending claim, claims 1-4, 7-13, 16-21, 24-26, 29-31, 34-36, 39-41, 44-46 and 49-51, under 35 USC 103(a) as obvious over Kitagawa (US 6,603,980).

The rejection is seen to be improper; Kitagawa does not qualify as prior art against this application. The relevant dates are as follows:

Kitagawa: publication date (WO00/13325): March 9, 2000;
§ 371 (c)(1), (2), (4) date: April 20, 2000;
PCT filing date: August 27, 1999.

Present Application: § 371 (c)(1), (2), (4) date: February 4, 2002;
PCT filing date/priority date: June 29, 1999.

The June 29, 1999 priority date of the present application precedes the earliest publication date of the reference (March 9, 2000), so Kitagawa is not prior art under 35 USC 102(a) or (b).

Revised 35 USC 102(e) [AIPA of 1999, as amended in 2002] supercedes all previous versions, with one exception relevant here; where the potential reference is based on an international application filed prior to November 29, 2000 [see MPEP 706.02(a), part II B]. Kitagawa's international application filing date is August 27, 1999, so the earlier version of 35 USC 102(e) applies. That earlier version of 35 USC 102(e) recites that a person is entitled to a patent unless:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the application for patent.

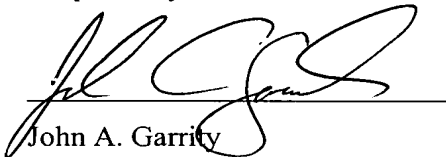
The earliest priority date of Kitagawa under the former 35 USC 102(e) is therefore its section 371 date, April 20, 2000. This is subsequent to June 29, 1999, the earliest priority date of the present application, and so Kitagawa is not prior art under 35 USC 102(e). Neither does Kitagawa qualify under any other provision of 35 USC 102.

The MPEP at the last paragraph of section 706.02(a) part II B is unambiguous:

Patents issued directly, or indirectly, from international applications filed before November 29, 2000 may only be used as prior art based on the provisions of 35 U.S.C. 102(e) in effect before November 29, 2000. Thus, the 35 U.S.C. 102(e) date of such a prior art patent is the earliest of the date of compliance with 35 U.S.C. 371(c)(1), (2) and (4), or the filing date of the later-filed U.S. continuing application that claimed the benefit of the international application.

Because Kitagawa does not qualify as prior art against this application, the Applicant makes no comment on the substance of the rejection or on the office action's interpretation of that reference against the pending claim. Any disagreement evident in previous prosecution between Applicant and Examiner respecting Kitagawa's relevance to the pending claims is therefore moot. The Applicant respectfully requests that the Examiner withdraw the rejections and pass claims 1-4, 7-13, 16-21, 24-26, 29-31, 34-36, 39-41, 44-46 and 49-51 to allowance. The undersigned welcomes the opportunity to discuss via teleconference any matters that may remain, formal or otherwise, at the Examiner's discretion.

Respectfully submitted:



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

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Amendment dated XX

Reply to office action dated April 23, 2007

8/20/2007

Date

Elaine F. Mann

Name of Person Making Deposit